

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of Accepting the Application for Industrial  
Disability Retirement of:**

**RONNY F. CESPEDES and CITY OF MONTCLAIR,**

**Respondents**

**Agency Case No. 2017-0925**

**OAH No. 2018030838**

**PROPOSED DECISION**

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on March 14, 2022, via the Microsoft Teams application.

John Shipley, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of respondent Ronny F. Cespedes.

Jon Hamilton appeared on behalf of respondent City of Montclair.<sup>1</sup>

Complainant requested that a default be entered on behalf of both respondents and that complainant be permitted to prove up the allegations set forth in the accusation. Complainant established compliance with Government Code sections 11505 and 11509, and the hearing proceeded as a default pursuant to Government Code section 11520.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 14, 2022.

## **ISSUE**

Is respondent Cespedes permitted to file an application for disability or is he otherwise precluded by applicable law?

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Respondent Cespedes had been employed by respondent City of Montclair with the police department, effective October 7, 1991, or a different date as the records are not entirely clear. By virtue of his employment, respondent Cespedes

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<sup>1</sup> Mr. Hamilton stipulated, on the record, to a default, as respondent City of Montclair did not oppose complainant's position.

became a local safety member of CalPERS subject to Government Code sections 21154 and 21156.

2. Anthony Suine, Chief of CalPERS's Benefit Services Division, signed the Statement of Issues on March 9, 2018, solely in his official capacity.

3. On January 11, 2016, respondent Cespedes signed an application for service pending industrial disability retirement, which was received by CalPERS on January 12, 2016. His application does not indicate a specific disability.

4. Thereafter, CalPERS received information and documents concerning respondent Cespedes's termination from employment, as discussed further below.

5. In a determination letter signed on June 27, 2017, CalPERS notified respondent Cespedes of its cancellation of his industrial disability retirement application. CalPERS notified respondent Cespedes that because the termination of his employment with respondent City of Montclair was "for reasons which were not the result of a disabling medical condition," he was not eligible for disability retirement.

6. On July 20, 2017, respondent Cespedes timely filed an appeal challenging the cancellation of his application and requesting a hearing.

7. This hearing followed.

### **Respondent Cespedes's Employment History**

8. As noted above, respondent Cespedes began his employment with respondent City of Montclair, at an unknown date, as a police officer. At the time of his retirement in 2014, he had been promoted to the rank of Sergeant.

9. An administrative leave notice issued by respondent City of Montclair to respondent Cespedes, dated April 3, 2012, indicated respondent Cespedes was being placed on paid administrative leave pending administrative investigation #13-03 regarding alleged conduct and comments made by him. At the time, respondent Cespedes was the Officer in Charge of the Detective Bureau. He was ordered to not access non-public areas of the police facility without authorization and a different detective was appointed as his replacement as Officer in Charge of the Detective Bureau until further notice.

10. Another administrative leave notice was issued by respondent City of Montclair to respondent Cespedes, dated April 23, 2013, which indicated he was "not to engage in any discussion with any member of the Detective Bureau regarding [his] actions or statements while a supervisor of the Detective Bureau."

11. Respondent City of Montclair issued administrative investigation #13-03, dated March 4, 2014, which set forth that an investigation was conducted regarding comments made by respondent Cespedes's during an investigation of a hate crime against a City of Montclair employee, J. Conley, an African-American male who discovered a photo in his locker at City Yard depicting "a person wearing a Ku Klux Klan robe and hood in front of a burning cross." During the hate crime investigation, respondent Cespedes commented to City Yard Supervisor Xavier Mendez that the hate crime investigation was a "waste of time," and that the Detective Bureau had "better things to do, like investigating child abductions, rapes, and murders." Mr. Mendez told Police Chief Keith Jones about the comments made by respondent Cespedes, and he was "shocked and taken aback by the comment made by Sergeant Cespedes."

Respondent City of Montclair's administrative investigation #13-03 resulted in the following allegations against respondent Cespedes:

- (1) Respondent Cespedes told a City Yard Supervisor the hate crime investigation was a “waste of time” and the Detective Bureau had “better things to do”;
- (2) Respondent Cespedes repeatedly made an inappropriate comment of “don’t ask me questions, I meet standards” to subordinates;
- (3) Respondent Cespedes subverted the “good order, efficiency, and discipline of the Department by making negative comments about the Department and Command Staff to subordinates”;
- (4) Respondent Cespedes spread rumors of Chief Jones “having a sexual affair with another female supervisor”;
- (5) Respondent Cespedes made an inappropriate and disparaging comment about another officer;
- (6) Respondent Cespedes engaged in and allowed inappropriate sex, age, and gender-based jokes;
- (7) Respondent Cespedes complained to subordinates about other officers being praised for capturing a suspect for felony weapons violations;
- (8) Respondent Cespedes ridiculed and mocked – for two years - a fellow officer for “a variety of things, including his name, and being of Filipino descent”;
- (9) Respondent Cespedes repeatedly mocked another officer for wearing the wrong uniform during a shift briefing;

- (10) Respondent Cespedes mocked another officer – for five years – about his Indian descent;
- (11) Respondent Cespedes approached another officer who was interviewed for this investigation, and asked him, “Did you throw me under the bus?”;
- (12) Respondent Cespedes retaliated against another officer who was interviewed for this investigation by denying his request to come to work late, and telling him “even though you’re pink I know you’re brown n down” and that another officer had “ratted him out” [Quoted as written in original.];
- (13) Respondent Cespedes told an officer, “so you did rat me out”; and
- (14) Respondent Cespedes was dishonest during his interview for the administrative investigation.

Upon conclusion of its administrative investigation #13-03, respondent City of Montclair determined that each of the allegations against respondent Cespedes was sustained except allegations (4) and (5). Based on its findings, respondent City of Montclair assessed respondent Cespedes was subject to discipline because he was found to be in violation of Montclair Police Department Policy sections 340.3.5, subdivision (ac), and 1020.6, subdivision (i).

12. A notice of intent to discipline, signed on March 10, 2014, was sent to respondent Cespedes by Captain Robert Avels, which informed respondent Cespedes of the recommendation that respondent Cespedes’s employment be terminated, based on the findings of administrative investigation #13-03.

13. On April 22, 2014, a Skelly<sup>2</sup> hearing was conducted wherein respondent Cespedes and his counsel were present.

14. A notice of termination, signed on June 3, 2014, by Chief of Police Michael deMoet, informed respondent Cespedes of his determination that the appropriate disciplinary action was to terminate respondent Cespedes's employment with respondent City of Montclair.

15. Respondent Cespedes appealed the notice of termination. A meeting was held on July 24, 2014, wherein City Manager Edward C. Starr and respondent Cespedes and their respective counsel were present. In a letter by City Manager Starr, signed on September 29, 2014, he recounted that he listened attentively to respondent Cespedes and his counsel and carefully reviewed the documents, and based on his findings, he denied respondent Cespedes's appeal of the termination of his employment.

16. Respondent Cespedes filed a labor grievance and a hearing before an arbitrator was conducted during several days in 2015 and 2016. On May 10, 2017, the

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<sup>2</sup> In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "pre-removal safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a Skelly hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.



arbitrator issued a recommended decision for the City Council, and found, in relevant part, that “there was just cause to discipline [respondent Cespedes] and that the penalty of discharge was appropriate; . . . ”

17. In a letter by counsel of respondent City of Montclair, signed on July 10, 2017, notice was given that respondent Cespedes had not appealed the decision of the arbitrator within 10 calendar days of its issuance, for review by the City Council, as required by the Memorandum of Understanding between respondent City of Montclair and the Montclair Police Officers’ Association. By not doing so, respondent Cespedes “chose not to finish pursuing his administrative remedies,” which bars him from seeking judicial review of the arbitrator’s decision.

18. On August 4, 2017, respondent Cespedes filed a petition for writ of administrative mandamus in the Superior Court of California, County of San Bernardino, seeking judicial review of the arbitrator’s decision. In a second amended petition, he alleged he should be “excused from exhausting the available administrative remedy of appealing to the city council because such action would be futile based upon the city’s denial of his prior government claim . . . ” On June 27, 2019, the trial court issued a ruling denying his petition for failure to exhaust all available administrative remedies [appealing to the City Council] prior to seeking judicial review and for failure to show futility as a basis for excuse.

19. Respondent Cespedes appealed the ruling issued by the Superior Court. On September 27, 2021, the Court of Appeal, Fourth District, Division 2, of California, issued a ruling that affirmed the trial court’s judgment, and found respondent Cespedes’s excuses for failing to exhaust all available administrative remedies had been forfeited, and the trial court’s findings were supported by substantial evidence.

## **Jon Hamilton's Testimony**

20. The following is a summary of the testimony of Jon Hamilton, who was called as a witness on behalf of complainant: Mr. Hamilton is employed by respondent City of Montclair as the Director of Administrative Services and Human Resources. He understands City of Montclair is a respondent in this matter, and joins in the position held by CalPERS. For that reason, respondent City of Montclair does not oppose a default. He is familiar with the exhibits in the record. He is also familiar with the termination of respondent Cespedes who was terminated for cause due to his conduct. Respondent Cespedes was not terminated in order to prevent him from being able to apply for disability benefits.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. CalPERS has the burden of proving respondent Cespedes's Disability Retirement Election Application is barred by *Haywood* and its progeny. (Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence of nonexistence of which is essential to the claim for relief or defense that he is asserting."].) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Bd. of Retirement* (1984) 152 Cal.App.3d 775, 783.) And to be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

## Applicable Statutes

2. Government Code section 21151, subdivision (a), provides the following: "Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, . . . "

3. Government Code section 21152 states, in relevant part, "Application to the board for retirement or a member for disability may be made by: . . . (d) The member or any person in his or her behalf."

4. Government Code section 21154 provides:

The application shall be made only (a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion. On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. On receipt of the

application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.

5. Government Code section 21156 states, in pertinent part:

[¶] . . . [¶]

(a2) In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

(b)(1) The governing body of a contracting agency, upon receipt of the request of the board pursuant to Section 21154 shall certify to the board its determination under this section that the member is or is not incapacitated.

(2) The local safety member may appeal the determination of the governing body. Appeal hearings shall be conducted by an administrative law judge of the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of this title.

6. Government Code section 21157 provides: “The governing body of a contracting agency shall make its determination within six months of the date of the receipt by the contracting agency by the board pursuant to Section 21154 . . . .”

## **Applicable Case Law**

7. The appellate court held that an employee’s termination for cause rendered him ineligible for disability retirement benefits in *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292. The court explained, “while termination of an unwilling employee for cause results in a complete severance of the employer-employee relationship (citation), disability retirement laws contemplate the potential reinstatement of that relationship if the employee recovers and no longer is disabled. (Citation.)” (*Id.*, at p. 1305.). The appellate court explained:

[W]e conclude that where, as here, an employee is fired for cause and the discharge is neither the ultimate result of the disabling medical condition or preemptive of an otherwise valid claim for disability retirement, the termination of the employment relationship renders the employee ineligible for disability retirement regardless of whether a timely application is filed. (*Id.*, at p. 1307.)

8. *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, involved a firefighter whose employment was terminated for cause. He filed an application for disability retirement on the effective date of his termination. The city council affirmed his termination, and the Board of Administration subsequently denied his application for disability retirement pursuant to *Haywood*. (*Id.* at p. 198.)

9. Analyzing the *Haywood* court's qualification that an employer's dismissal may not preempt "an otherwise valid claim for disability retirement," the *Smith* court identified "the key issue [as] thus whether his right to a disability retirement matured before plaintiff's separation from service." (*Smith v. City of Napa*, supra, 120 Cal.App.4th at p. 206.) The court explained "a vested right matures when there is an unconditional right to immediate payment," and "a duty to grant the disability pension . . . [does] not arise at the time of injury itself but when the pension board determine[s] that the employee [is] no longer capable of performing his duties." (*Ibid.*) The appellate court recognized an exception when an impending ruling on an application for disability retirement that is delayed, through no fault of the applicant, until after his employer-employee relationship has been terminated. (*Id.*, at pp. 206-207.)

## **Evaluation**

10. The holdings in *Haywood* and its progeny are that the termination of the employer-employee relationship renders the former employee ineligible for disability retirement, so long as termination is neither the ultimate result of a disability nor preemptive of a valid claim for disability retirement.

11. In this case, respondent Cespedes was terminated from his employment with respondent City of Montclair for cause due to his conduct, as determined by an exhaustive administrative investigation. Mr. Hamilton credibly testified that respondent Cespedes was terminated for cause, and not terminated as a result of a disabling condition nor to prevent him from being able to apply for disability benefits. Further, respondent Cespedes's termination for cause was upheld in a Skelly hearing and in a recommended decision by an arbitrator. He filed a petition for writ of administrative mandamus that was denied by a trial court for failing to exhaust all administrative remedies; and the trial court's ruling was affirmed by an appellate court. Based on the

above, respondent Cespedes's appeal of CalPERS's decision finding that he is not eligible for disability retirement is denied.

## **ORDER**

The appeal of Ronny F. Cespedes to be granted the right to file an application for industrial disability retirement is denied.

DATE: April 12, 2022



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings